

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 088-4033; FRL-]

Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Disapproval of the Reasonable-Further-Progress
Plan for the 1996-1999 Period for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (for the Philadelphia ozone nonattainment area) to meet the rate-of-progress (ROP) requirements under the Clean Air Act (the Act). Under these requirements, states must demonstrate a 3% reduction of volatile organic compounds (VOCs) per year for a three year period between 1996 and 1999. EPA is proposing disapproval because the ROP plan submitted by Pennsylvania for the Philadelphia area projects emissions reductions only for control strategies to the 2005 time frame, rather than for the 1999 and 2002 interim milestone years, per the ROP requirements of the Act. Several of these measures have not been fully adopted or have been stayed or replaced by the Commonwealth. Additionally, the Commonwealth has not calculated emissions target level to be achieved in 1999 (or for 2002) to ensure attainment of reasonable-further-progress toward attainment by the statutory deadline. Finally, the 1990 emissions inventory estimates provided in the Commonwealth's plan for ROP for the period from 1996-1999 vary substantially from the inventory submitted as the Commonwealth's official 1990 base year inventory. That VOC base year inventory was formally revised in September of 1996. This inventory superseded all previous 1990 base year inventories submitted by the Commonwealth for Philadelphia -- including the one contained in the ROP plan for the period from 1996 to 1999. This rulemaking action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, Ozone and Mobile Sources Section (3AT21), USEPA - Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566-2176. Questions may also be sent via e-mail, to: Rehn.Brian@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION:

Introduction - Clean Air Act Requirements:

Reasonable-further-progress Requirements

Section 182(c)(2) of the Clean Air Act (the Act), as amended by Congress in 1990, requires each state having one or more ozone nonattainment areas classified as serious or worse to develop a plan (for each subject area) that provides for actual VOC

reductions of at least 3 percent per year averaged over each consecutive 3-year period, beginning six years after enactment of the Act, until such time as these areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These plans are referred to hereafter as post-1996 rate-of-progress plans (or post-96 ROP plans). The first of these ROP plans, for the 3-year period from 1996-1999, was due to be submitted to EPA as a SIP revision by November 15, 1994.

The Act also mandates a 15 percent VOC emission reduction, net of growth, between 1990 and 1996. That SIP revision was due to EPA by November 15, 1993. The plan for these reductions occurring between 1990-1996 is hereafter referred to as the "15% percent rate-of-progress plan."

The Clean Air Act limits the creditability of certain control measures toward the reasonable-further-progress requirement. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990, or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit toward reasonable-further-progress requirements for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in place prior to 1990.

Additionally, section 172(c)(9) of the Clean Air Act requires "contingency measures" to be included in the plan revision. These measures are required to be implemented *immediately* if reasonable-further-progress has not been achieved, or if the NAAQS standard is met by the deadline set forth in the Clean Air Act.

Attainment Demonstration Requirement

The attainment dates prescribed by the Act for areas classified as "ozone nonattainment areas" are as follows: November 15, 1999, for serious ozone nonattainment areas; November 15, 2005, for severe ozone nonattainment areas; November 15, 2007, for severe areas with 1986-1988 design values greater than 0.190 ppm; or November 15, 2010, for extreme ozone nonattainment areas.

The Act also requires that states required to submit post-1996 ROP plan SIPs for certain areas, due by November 15, 1994 for serious or worse ozone nonattainment areas, must also simultaneously submit for those areas an "attainment demonstration" to provide for achievement of the ozone NAAQS by the statutory deadline. This demonstration is to be based on photochemical grid modeling, such as the Urban Airshed Model (UAM), or an equivalent analytical method. However, in a March 2, 1995, memorandum from Mary Nichols, Assistant Administrator for EPA's Office of Air and Radiation, EPA set forth guidance for an alternative approach to satisfy the attainment demonstration requirements under §182(c)(2)(A) of the Act. Under this alternative, states were provided the option to utilize a two-phased approach in order to satisfy the attainment demonstration requirements of the Act.

Background:

In Pennsylvania, three nonattainment areas were required to submit 15% plans in 1993 under the Act. These include the Philadelphia severe nonattainment area, the Pittsburgh moderate nonattainment area, and the Reading moderate nonattainment area. Since Philadelphia is the only Pennsylvania nonattainment having a classification of serious or worse, it is the only area with an attainment deadline beyond 1996. Therefore, the Philadelphia area must continue to demonstrate reasonable-further-progress toward attainment until its 2005 attainment deadline -- unless the Commonwealth can demonstrate attainment of the standard with fewer reductions sooner than the statutory deadline.

The Philadelphia metropolitan area includes counties in New Jersey, Delaware, and Maryland, as well as Pennsylvania, all of which must demonstrate reasonable-further-progress. However, Pennsylvania is only responsible for achieving RFP within its portion of that metropolitan area. The Commonwealth did not enter an agreement with the other states which comprise the metropolitan Philadelphia area to do a multi-state ROP plan, and submitted only a plan to reduce Pennsylvania's contribution by 15 percent.

On November 15, 1994, the Pennsylvania Department of Environmental Resources submitted a post-1996 ROP plan for the Pennsylvania portion of the Philadelphia ozone nonattainment area, which included an attainment demonstration for that area. The post-1996 ROP plan submitted by Pennsylvania is actually an attempt to demonstrate reasonable-further-progress for Philadelphia from 1990 to 2005 -- the area's prescribed attainment date under the Act. This plan depicts a 42% reduction (3% per year) from the 1990 baseline, net of emissions growth during that period. In a letter dated May 31, 1995, from James Seif, Secretary of Pennsylvania's Department of Environmental Resources, Pennsylvania expressed its intent to follow a phased approach to meeting the attainment demonstration requirements of the Clean Air Act, as set forth in a March 2, 1995, EPA guidance memorandum.

EPA is today taking action only upon Pennsylvania's post-1996 ROP plan submittal. However, EPA is not taking action upon the attainment demonstration portion of that plan. Based on Pennsylvania's commitment to pursue the phased attainment demonstration approach, EPA will act upon the attainment demonstration at a later date.

In a separate submittal from its post-1996 ROP plan for

Philadelphia, Pennsylvania submitted a plan to achieve a 15% reduction in VOCs for the period from 1990 to 1996 for the Philadelphia area. Pennsylvania amended this plan in January of 1995. EPA proposed disapproval of that January 1995 plan in the July 10, 1996, edition of the Federal Register (61 FR 36320). Pennsylvania submitted an amended 15% plan for Philadelphia on September 18, 1996, which included both a revised 1990 base year emission inventory and a revised contingency measure plan for the Philadelphia area, as well. EPA will act upon this September 1996, 15% plan SIP submittal separately from today's rulemaking action.

However, Pennsylvania has not revised its post-1996 ROP plan since it was originally submitted, in November of 1994. EPA has reviewed this post-1996 ROP plan submittal and has identified several serious deficiencies that prohibit approval of this SIP under §110 of the Clean Air Act. A detailed discussion of these deficiencies is included below, in the 'Analysis' portion of this rulemaking action. Due to these deficiencies, the post-1996 ROP plan will not achieve the total reductions required by the rate-of-progress requirements of the Act. EPA's review of this plan did not examine the individual control measures applied toward rate-of-progress in the post-1996 ROP plan. Many of these measures have been formally submitted as separate control measure SIP revisions, or are national rules adopted by the federal government.

Today's action focuses only the approvability of measures toward the reasonable-further-progress requirement of the Act, and does not address whether the control measures or inventories included in the post-1996 plan comply with other specific underlying requirements of the Act pertaining to those elements of the plan. A summary of the EPA's findings follows.

ANALYSIS OF THE SIP REVISION:

Base Year Emission Inventory:

The baseline from which states determine the required reductions for rate-of-progress planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source sectors: stationary, area, on-road mobile, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. Pennsylvania formally revised this base year inventory on September 12, 1996, to reflect recent, more accurate estimates of actual 1990 emissions. EPA has not yet taken rulemaking action on the base year inventory submittal. The post-1996 ROP plan submitted in November of 1994 projects both emissions reductions and emissions growth which are predicated upon an inventory which has since been revised. The inventory that forms the basis of Pennsylvania's present post-1996 ROP plan is no longer valid, and EPA cannot approve emissions reduction "target levels" derived from this outdated inventory. EPA intends to conduct separate rulemaking action on Pennsylvania's official 1990 base year inventory SIP submittal at a later date.

Growth in Emissions Between 1996 and 1999

EPA has interpreted the Clean Air Act to require that states must provide for sufficient control measures in their reasonable-further-progress plans to offset any emissions growth projected to occur after 1996. Therefore, to meet the ROP requirement, a state must provide for sufficient emissions reductions to offset projected growth in emissions, in addition to a 3 percent annual average reduction of VOC emissions. Thus, an estimate of emissions growth from 1996 to 1999 is necessary for demonstrating reasonable-further-progress by 1999. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since sources typically grow

at different rates. EPA's inventory preparation guidance recommends the following indicators, in order of preference: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Pennsylvania's post-1996 plan projects total growth of 61 tons per day (tpd) for the period between 1990 and 2005. This includes all sectors, i.e., point, area, on-road motor vehicle, and non-road vehicle source categories. Growth for point and area sources is based upon estimates from the Bureau of Economic Analysis (BEA). Pennsylvania linearly extrapolated from several BEA reports representing past and future years to obtain its 2005 estimates for stationary, area, and non-road mobile source sectors' growth. Highway mobile source growth was determined through projections using the MOBILE computer model and local projections for vehicle miles of travel increases in Philadelphia.

No interim growth estimates have been included in Pennsylvania's plan, therefore, growth for the period from 1996 to 1999 cannot be determined. Pennsylvania must estimate interim growth levels to determine the level of emissions reduction control strategies needed to demonstrate reasonable-further-progress by 1999.

Calculation of Target Level Emissions:

A "target level" of emissions represents the maximum level of emissions allowed in each post-1996 milestone year which will still provide the 3 percent per year rate-of-progress requirement mandated by the Act. EPA's guidance document entitled *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, dated January 1995 (EPA -452-93-015), outlines the approach states must take to calculate the 1999 target level needed to satisfy the Act's post-1996 plan requirement.

The Commonwealth has not calculated a 1999 target level in its

plan. Instead, the Commonwealth calculated a target level for ROP by 2005. Without an emissions target level for the 1999 milestone year, it is impossible to determine if the Commonwealth has achieved reasonable-further-progress for the 1996-1999 period. Therefore, EPA must disapprove the Commonwealth's ROP plan for failure to demonstrate a 3 percent per year (on average) reduction from 1996 to 1999, as required under §182(c)(2)(B) of the Act.

Control Strategies in the Philadelphia Post-1996 ROP Plan:

Federal and state adopted VOC control measures may be credited toward the ROP plan requirements of the Act (with the exception of measures promulgated prior to 1990 which were specifically discussed earlier). Per §182(c)(2)(C) of the Act and EPA guidance, states also may substitute NOx control strategies (with certain limitations) in the ROP plan, provided that these NOx reductions will provide at least as much progress toward meeting the NAAQS as VOC controls would. In order to claim NOx reductions, states must include a summary NOx emissions inventory and NOx growth projections as part of their ROP SIP. The Commonwealth has not provided this NOx inventory and growth information in its post-1996 SIP submittal.

The Commonwealth has substituted NOx reductions in its post-1996 plan, but has not calculated 1999 milestone target levels for the pollutant NOx. Therefore, EPA must disapprove the Commonwealth's post-1996 ROP plan for failure to satisfy the requirements of §182(c)(2)(C) of the Act and to applicable EPA guidance.

The specific measures adopted (either through state or federal rules) for the Philadelphia area are addressed, in detail, in the Commonwealth's post-1996 plan. A list of control measures for which Pennsylvania has claimed credit in its Philadelphia post-1996 ROP plan for Philadelphia follows, along with a brief description of each.

Description of Control Strategies in the Post-1996 Plan

Stage II Vapor Recovery

This state-adopted regulation requires the installation and operation of vapor recovery equipment on gasoline dispensing pumps to reduce vehicle refueling emissions. The state regulation for this program is codified in 25 PA Code §129.75. EPA approved the Commonwealth's Stage II program on June 13, 1994 (59 FR 112).

Automobile Refinishing

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Pennsylvania's post-1996 plan claims reductions from EPA's national rule. Use of emissions reductions from EPA's expected national rule is creditable toward reasonable-further-progress.

Reformulated Gasoline

Section 211(k) of the Clean Air Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe, or worse. This gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. As a severe area, Philadelphia benefits from the emission reductions from this program. This measure is creditable toward ROP planning.

Transportation, Storage, and Disposal Facilities (TSDFs) Rule

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including: incineration, treatment, or underground injection or landfilling. EPA promulgated a national rule on June 21, 1990 for the control of

TSDf emissions. This measure is creditable toward ROP planning.

Industrial Rule Effectiveness (RE) Improvements

Rule effectiveness is a means of enhancing rule compliance or implementation by industrial sources, and is expressed as a percentage of total available reductions from a control measure. The default assumption level for rule effectiveness is 80%. Pennsylvania claims RE improvements from the 80% default level to a level of 90% in their ROP plan SIP revision for Philadelphia, based upon improvements to RACT regulations for specific facilities in the 5-county Philadelphia area. The applicable RACT rules pertain to surface coating operations (PA Code §129.52) and offset printing operations (PA Code §129.67).

Pennsylvania followed EPA policy to quantify emissions reductions from specific RE improvements for two categories, in the absence of quantifiable compliance or emissions data. The RE measures Pennsylvania claims toward the ROP plan include facility improvements, as well as improved state oversight. Facility measures include: improved operator training, better operation and maintenance of process equipment, improved source monitoring/reporting. State oversight improvements include: more inspector training, stringent compliance inspections of all RE improvement facilities. RE improvements are creditable toward the ROP plan requirement of the Clean Air Act.

Permanent VOC/NOx Source/Process Shutdowns

Several industrial VOC sources that were operational in 1990 (i.e., included in the base year inventory) have since shut down either processes or entire facilities. Pennsylvania has adopted a banking rule (25 Pa Code §127.208), which requires that sources wishing to bank emission reduction credits, or ERCs, must do so within one year of initiation of the shutdown. If not, the Commonwealth can claim credit for the reductions as permanent and enforceable emissions reductions.

Pennsylvania's ROP plan claims partial credit for shutdowns for which the source "banked" emissions reductions, and the Commonwealth claimed the entire shutdown credit for sources that did not bank their emissions within the one year deadline set forth in Pennsylvania's banking rule. The ROP plan reflects shutdowns from twenty VOC sources in the Philadelphia nonattainment area. These credits are ineligible for use as future ERCs, or to offset emissions from new sources under the Commonwealth's new source review regulation. Use of permanent, enforceable shutdowns for ROP planning is acceptable, provided the reductions are not "double-counted" in the plan (e.g., industrial growth estimates do not account for the shutdowns).

Architectural and Industrial Maintenance Coatings (AIM) Rule

Emission reductions have been projected for AIM coatings due to the expected promulgation by the EPA of a national reformulation rule. These coatings include a host of field-applied surface coatings used for household, commercial, and industrial applications -- including for example, paints, highway coatings, and architectural finishes.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing "new car" standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Clean Air Act was amended in 1990, the resulting emission reductions are creditable toward ROP plans. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions were not significant prior to 1996. FMVCP programs promulgated as a result of the Clean Air Act as amended in 1990 are creditable for ROP planning purposes.

Off-Road Use of Reformulated Gasoline

The use of reformulated gasoline will also result in reduced

emissions (for both exhaust and evaporative emissions) from off-road engines such as outboard motors for boats and lawn mower engines. This measure is creditable toward the ROP requirements of the Act.

IM240 Enhanced Vehicle Inspection and Maintenance (I/M) Program

The I/M program described in the Commonwealth's ROP plan is a contractor-operated, centralized, IM240 inspection program. This program was conditionally approved by EPA in August of 1994. However, since that time, Pennsylvania suspended operation of this program, terminated the test inspector contract, and began the rule adoption process for a decentralized program as a replacement for the centralized program. Pennsylvania submitted a new I/M program SIP to EPA, under authority provided by the National Highway Systems Designation Act of 1995, on March 22, 1996, which EPA proposed to conditionally approve on October 3, 1996. Pennsylvania has not revised the ROP plan for Philadelphia to reflect the significant changes to the I/M program since the time the ROP plan was submitted to EPA. I/M program emissions reductions are creditable toward ROP planning.

VOC/NOx Reasonably Available Control Technology (RACT) Rules

The Act requires states to adopt regulatory programs to control major sources of VOCs and NOx located in ozone nonattainment areas -- with the definition of "major" becoming increasingly stringent based upon the nonattainment area classification. RACT is a generic term referring to the variety of controls available to reduce emissions from a source or class of sources. EPA has issued guidelines (i.e., CTGs) for RACT for more than 30 VOC source categories, with plans to issue at least 15 more. Additionally, EPA has issued Alternative Control Techniques (ACTs) for specific classes of NOx sources.

Pennsylvania has adopted a "case-by-case" regulatory approach to RACT, which applies to the Philadelphia area. Individual sources are reviewed independently to determine the level of RACT that

source must enact. RACT improvements required by the Clean Air Act of 1990 are creditable toward ROP plans.

Employee Trip Reduction (ETR) Program

This program requires employers having 100 or more employees in a subject nonattainment area to develop and submit trip reduction plans and to reduce their employees trips, as measured by average passenger occupancy (APO) levels. A regulation implementing this Clean Air Act requirement was adopted by Pennsylvania, but was stayed by the Governor before it became effective. Congress eventually amended the Clean Air Act to change the nature of the ETR requirement to allow for its voluntary implementation. Mandatory ETR programs are creditable toward ROP planning.

Consumer Products National Rule

EPA is in the process of adopting regulations to control VOC emissions from consumer products, through manufacturer reformulation of these types of products. These products include household, personal, and automotive related-products which contain VOCs. Pennsylvania has claimed credit toward the ROP plan for implementation of this national rule. The consumer products national rule is creditable toward ROP planning.

Traffic Line Painting Reformulation

This measure would require conversion from VOC to water based traffic line paints by the Pennsylvania Department of Transportation (PennDOT). This measure would take the form of a consent decree with PennDOT requiring continued use of these water-based coatings. Pennsylvania has taken credit for this measure in its post-1996 plan. Only through a mandatory enforcement mechanism (e.g., a binding consent decree) would this measure be creditable toward ROP planning.

Highway Vehicle Control NOx Reductions

This measure includes total NOx reductions associated with

several mobile source programs. Several programs which would achieve NOx reductions, in addition to any other benefits, include the enhanced I/M program, the Federal Motor Vehicle Control Program (FMVCP), and Phase II of the reformulated gasoline program. Pennsylvania has apparently taken credit for all NOx reductions stemming from mobile source measures in place, which provide reductions in the Philadelphia area. However, it is unclear which specific measures are included in the Commonwealth's estimates.

Ozone Transport Region Industrial / Utility Boiler Controls

The Ozone Transport Commission adopted a memorandum of understanding (MOU) for a control strategy to address industrial NOx emissions, primarily those generated by electric utilities. The MOU recommends reductions (from 1990 levels) from 250 million Btu and larger fossil fuel fired indirect transfer units of NOx. Additionally, 15 megawatt electric generating units would be capped at 1990 emissions levels. The reductions would take place through two phases, beginning in 1999. Pennsylvania has claimed these NOx reductions in its post-1996 ROP.

Analysis of Control Measures:

Emission Control Measures
For the Philadelphia Ozone Nonattainment Area
Post-1996 Plan

VOC Control Strategies

IM240 Program

Federal Reformulated Gasoline

Federal Motor Vehicle Control Program

(Tier I vehicle standards)

Employer Trip Reduction Program

Stage II Vapor Recovery at Gasoline Stations

VOC/NOx RACT

Select Industrial Rule Effectiveness Improvements (80%→90%)
Federal Architectural Industrial and Maintenance Coatings Rule
Industrial Facility/Process Shutdowns
Federal Consumer Products Rule
Federal Autobody Refinishing Rule
Traffic Line Paint Reformulation
Treatment, Storage, and Disposal Facility RCRA National Rule

NOx Control Strategies

Total Highway Vehicle-related Reductions
Industrial Facility/Process Shutdowns
Industrial/Utility Boiler NOx Controls

The Commonwealth's plan projects emissions reductions from each of the above control strategies for the year 2005 and, therefore reductions were estimated by the Commonwealth for the evaluation year 2005. However, for the post-1996 plan, the Commonwealth is required to project reductions expected in 1999 for any claimed control strategy, in order to demonstrate that the area will meet its 1999 target level, and therefore demonstrate reasonable-further-progress for the 1999 milestone date specified by the Act.

Without a 1999 milestone target level and a projection for 1999 emissions reductions associated with the control strategies claimed within the post-1996 ROP plan, it is impossible to determine if reasonable progress has been achieved for the period from 1996 to 1999.

Several of the control strategies contained in the post-1996 plan are not creditable toward ROP under the Act, since the state has not adopted rules for those programs, or the programs have been stayed and are not presently being implemented as stated by the post-1996 plan. One example is the enhanced IM240 program

described in the Commonwealth's SIP, which has been subsequently replaced with a test-and-repair ASM enhanced I/M program. Another example, the ETR which was stayed, and is no longer being implemented as a mandatory control measure, as described in the post-1996 ROP plan.

Since EPA cannot determine if the measures contained in the Philadelphia post-1996 plan are sufficient to demonstrate reasonable-further-progress from 1996 to 1999 or from 1999 to 2002, EPA is not evaluating the creditability of specific measures or the levels of emissions reductions claimed by the Commonwealth for specific measures in the plan, at this time.

Contingency Measures:

Per section 172(c)(9) and 182(c)(9) of the Act, states must include contingency measures in their rate-of-progress plan submittals for ozone nonattainment areas classified as moderate or above. Contingency measures are measures which are to be immediately implemented if reasonable-further-progress is not achieved in a timely manner, or if the areas do not attain the NAAQS standard by the applicable date mandated by the Act. EPA's interpretation of this Clean Air Act requirement is set forth in *The General Preamble to Title I* (57 FR 13498), which requires that the contingency measures should, at a minimum, ensure that emissions reductions continue to be made if reasonable progress (or attainment) is not achieved in a timely manner. Contingency measures must be fully adopted rules or measures but do not need to be implemented until they are triggered by a failure to either meet a milestone or attain the NAAQS.

States must show that their contingency measures can be implemented with minimal further action on their part, and with no additional rulemaking action (e.g., public hearings, legislative review, etc.).

Analysis of The Commonwealth's Contingency Measures:

The Commonwealth's post-1996 plan does not specify any contingency measures to be applied if reasonable-further-progress is not achieved by the 1999 milestone date. Pennsylvania's post-1996 plan indicates the state will have more control measures in place than is needed to demonstrate reasonable-further-progress by 2005, and that the "surplus" of emissions reductions generated by these control measures eliminates the necessity for contingency measures, since this surplus could be used toward any shortfall.

EPA disagrees with this rationale. The contingency measures must be available in 1999 if reasonable progress is not achieved by that milestone date, not 2005 as the Commonwealth's plan provides for. If EPA determines there is an emissions reduction shortfall in 1999, measures which have already been enacted by the Commonwealth or the federal government would not serve to alleviate the shortfall. Only through implementation of additional measures (i.e., contingency measures), or through early implementation of measures slated for the future, could additional emissions reductions occur.

Therefore, the Commonwealth's plan is not approvable at this time, due to a lack of sufficient contingency measures to offset sufficient ozone precursor emissions in the year after a shortfall, or failure to achieve ROP, has been identified.

However, the Commonwealth has submitted a contingency measure plan as part of its September 1996 15% plan submittal. EPA will act upon that submittal, including the contingency measures contained within, in a separate rulemaking from today's action.

PROPOSED RULEMAKING ACTION:

EPA has evaluated this submittal for consistency with the Clean Air Act, applicable EPA regulations, and EPA policy.

Pennsylvania's post-1996 rate-of-progress plan for the Philadelphia nonattainment area will not achieve sufficient reductions to meet the rate-or-progress requirements of §182(c)(2)(B) of the Act. Pennsylvania has not projected emissions growth for the period from 1996-1999, nor has the Commonwealth calculated an interim "target level" of emissions for 1999, by which to measure its rate-of-progress in attaining the ozone NAAQS. Instead, the Commonwealth's plan evaluates emissions reductions for the period from 1990 to 2005 -- ignoring any interim evaluation milestones.

Several of the measures listed in the plan (to occur by 2005) have been halted or stricken from the Commonwealth's regulations, and are therefore invalid toward meeting the ROP requirement for the 1999 milestone year.

Additionally, the baseline 1990 emissions inventory contained in the Commonwealth's post-1996 plan has been superseded by a revised formal base year inventory which was submitted in September of 1996 as part of the Commonwealth's 15% RFP plan. The inventory from which many of the control measure emissions reductions for the Commonwealth's post-1996 plan (which contains projected emissions reductions from 1990 to 2005) were determined is therefore invalid. The post-1996 ROP plan control measure reductions must be recalculated based upon the Commonwealth's revised base year inventory.

Finally, the Commonwealth's plan does not contain contingency measures. Under §172(c)(9) and §182(c)(9) of the Act, the Commonwealth is required to adopt such backstop measures in the event an emissions shortfall occurs in the 1999 milestone year.

In light of the above deficiencies, EPA is proposing to

disapprove this SIP revision, which was submitted November 12, 1994, under §110(k)(3) and §301(a) of the Act. The submittal does not satisfy the requirements of §182(c)(2)(B) of the Act regarding the post-1996 rate-of-progress plan, nor the requirement of §172(c)(9) of the Clean Air Act regarding contingency measures.

EPA is soliciting public comments on the issues discussed in this document, or on other matters relevant to the demonstration of reasonable-further-progress toward attainment of the ozone NAAQS for the period from 1996 to 1999. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the Addresses section of this document.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act, as enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute and therefore must be disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

ADMINISTRATIVE REQUIREMENTS:

Executive Order 12866:

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the state request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any preexisting federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Unfunded Mandates:

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the Commonwealth's post-1996 rate-of-progress plan SIP revision will be based on whether it meets the requirements of §110(a)(2)(a)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52 [Include only those terms that are appropriate to the action being taken]

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

10-15-96
Dated:

W. Michael McCabe
for W. Michael McCabe,
Regional Administrator,
Region III.

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